Electro-Flyte, Inc. *and* United Steelworkers of America, AFL–CIO, CLC. Cases 3–CA–21918 and 3–CA–22205

June 30, 2000

DECISION AND ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY MEMBERS FOX, LIEBMAN, AND BRAME

Upon charges filed by the Union in Cases 3–CA–21918 and 3–CA–22205 on May 7 and October 27, 1999, respectively, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint on December 21, 1999, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The General Counsel issued an initial complaint in Case 3–CA–21918 on September 29, 1999, based solely on the May 7, 1999 charge. Although properly served copies of the charges, initial complaint, and amended consolidated complaint, the Respondent filed only a letter dated October 12, 1999, purporting to answer the initial complaint.

On January 20, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On January 24, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Procedural History

The initial complaint alleges that the Respondent has violated Section 8(a)(5) and (1) of the Act by delaying in providing certain information and failing and refusing to provide certain information requested by the Union in its March 18 and April 1, 1999[1] letters to the Respondent. In response to the complaint, the Respondent, acting pro se, sent a letter to the Regional Director on October 12, enclosing copies of correspondence with the Union which indicated that the Respondent had supplied much of the requested information but was hampered in its efforts to comply fully because some of its records were temporarily in storage. The October 12 letter stated that the Respondent had tried its best to provide the information requested by the Union but that the Respondent had been without its files for almost 3 months due to moving its business to a new building and that it had been impossible to comply with the Union's requests at that time. The letter further stated that, when the Respondent finally relocated, it began providing information as it came out of storage. The letter additionally stated that the only requested information that the Union then lacked was "1998 401K breakouts per employee" and that the Respondent was enclosing that information with the letter.

The December 21 amended consolidated complaint revised the allegations contained in the initial complaint to allege only that the Respondent unduly delayed in providing the Union the information requested on March 18 and April 1. The amended consolidated complaint additionally alleged that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide information requested by the Union on October 18 and 21, by failing to remit contractually required benefit fund contributions after May 25, by notifying employees unilaterally that they were required to pay their own health insurance premiums, by dealing directly with employees on October 25 by suggesting that they appoint a representative to collect health insurance premiums and submit them directly to the Respondent, and by closing its facility, ceasing business, and terminating all employees on October 29 without notice to the Union or an opportunity to bargain regarding the effects of this conduct.

The General Counsel contends in his motion that, under Section 102.20 of the Board's Rules and Regulations, the Respondent's October 12 letter does not constitute an acceptable answer to the complaint allegations in Case 3–CA–21918. The General Counsel argues that, even under the more lenient standards applicable to pro se respondents, the letter fails to address any of the legal or factual allegations of the initial complaint and fails to admit or deny any of the initial complaint allegations. Additionally, the General Counsel notes that the Respondent has failed to file an answer to the amended consolidated complaint, has given no reason for this failure, and never requested an extension of time for filing an answer. The General Counsel accordingly submits that no sufficient answer has been filed, that in accordance with Sections 102.24 and 102.50 of the Board's Rules all allegations in the amended consolidated complaint should be deemed to be true and should be so found by the Board, and that summary judgment as to all the complaint allegations should be granted.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint and the amended consolidated complaint affirmatively state that unless an answer is filed within 14 days of service, all the allegations in the respective complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 5, 2000, notified the Respondent that unless an answer was received by January 6, 2000, a Motion for Summary Judgment would be filed.

[1] All dates herein are in 1999, unless otherwise indicated.

As noted above, the General Counsel argues that the Respondent's October 12 letter does not constitute an acceptable answer to the complaint allegations in Case 3–CA–21918. We do not agree. Given the Respondent's pro se status, we find that the October 12 letter is sufficiently responsive to those complaint paragraphs alleging that the Respondent unduly delayed providing the information requested in the Union's March 18 and April 1 letters.

The Board "typically has shown some leniency toward a pro se litigant's efforts to comply with our procedural rules." *A.P.S. Productions*, 326 NLRB 1296 (1998). We find the October 12 letter adequately denies or sets forth a defense to the complaint allegations that it unduly delayed in providing the Union with the information requested March 18 and April 1. As the Board has noted: "[I]t is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good-faith effort to respond to the request *as promptly as circumstances allow*." (Emphasis added.) *Good Life Beverage Co*., 312 NLRB 1060, 1062 fn. 9 (1993). In our view, the Respondent's letter effectively asserts that it made a reasonable good-faith effort to respond to the Union's March 18 and April 1 information requests as promptly as circumstances allowed. Accordingly, we shall deny the General Counsel's motion as to amended consolidated complaint paragraph 9(e) and paragraph 14 to the extent that it pertains to paragraph 9(e).[2]

The Respondent's October 12 letter has not, however, placed into dispute the allegations contained in paragraphs 9(a), (b), or (d) (as the latter pertains to pars. 9(a) and (b)) of the amended consolidated complaint. Paragraph 9(a) alleges that since on or about March 18, 1999, the Union, by letter, has requested that the Respondent furnish the Union with the information set forth in appendix A attached to the amended consolidated complaint. Paragraph 9(d) alleges that since on or about April 1, 1999, the Union, by letter, has requested that the Respondent furnish the Union with the information set forth in appendix B attached to the amended consolidated complaint. Paragraph 9(d) alleges in pertinent part that the information requested by the Union, as described above in paragraphs 9(a) and (b), is necessary for, and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the production employees unit and the laboratory employees unit. The Respondent has also not placed into dispute complaint paragraphs 1 through 8 of the amended consolidated complaint,[3] which set forth the filing and service of the underlying unfair labor practice charges, and allege that the Respondent and the Union are respectively an employer engaged in commerce and a labor organization under the Act, that John Balazovic is the Respondent's chief operating officer and a supervisor and agent of the Respondent, that the Union is the recognized collective-bargaining representative of the production and maintenance employees bargaining unit and the laboratory employees bargaining unit, that these units are appropriate bargaining units, that the collective-bargaining agreement for the production and maintenance employee unit was effective from April 15, 1997, to April 14, 2000, and that the collective-bargaining agreement for the laboratory employees unit was effective from June 1, 1998, to May 31, 1999, and was extended through October 31, 1999. The Respondent's October 12 letter does not in any manner place into dispute these allegations. As this letter does not admit, deny, explain, or otherwise meet the substance of these complaint allegations, and the Respondent failed to file an answer or respond in any manner to the amended consolidated complaint, we shall grant the summary judgment as to those paragraphs.

As the Respondent did not file an answer or respond in any manner to the amended consolidated complaint, it has not placed in dispute the alleged violations set forth in that complaint other than the allegation that it unduly delayed providing the information requested in the Union's March 18 and April 1 letters. Accordingly, in the absence of good cause being shown for the failure to file a timely answer to the amended consolidated complaint, we grant summary judgment as to all the alleged violations set forth in that complaint other than the allegation that the Respondent unduly delayed providing the information requested in the Union's March 18 and April 1 letters.[4]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Syracuse, New York, has been engaged in providing engineering services. During the 12 months preceding the issuance of the complaint, the Respondent, in conducting its business operations, provided services valued in excess of $50,000 in States other than the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, United Steelworkers Of America, AFL–CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

[2] Pars. 9(e) and 14 of the amended consolidated complaint are equivalent to pars. 9(d) and 10, respectively, of the initial complaint.

[3] Pars. 1–8 of the amended consolidated complaint are equivalent to pars. 1–8, respectively, of the initial complaint.

[4] "The Board will not grant summary judgment based on a respondent's failure to answer an amended complaint's allegations that are substantively unchanged from allegations contained in a prior version of the complaint to which the respondent filed a proper denial." *Media One, Inc*., 313 NLRB 876 (1994).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Balazovic held the position of the Respondent's chief operating officer and has been a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act. The following employees of the Respondent (the production and maintenance employees unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, excluding all office clerical employees, laboratory employees, guards, professional employees and supervisors as defined in the Act.

The following employees of the Respondent (the laboratory employees unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All laboratory employees, technical employees, and all office clerical employees, but excluding guards, production and maintenance employees, supervisors, all inside and outside sales people, and any new position not currently defined by the collective-bargaining agreement.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the production and maintenance employees unit and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective from April 15, 1997, to April 14, 2000 (the production and maintenance employees agreement).

At all material times, the Union has been the designated exclusive collective-bargaining representative of the laboratory employees unit and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement (the laboratory employees agreement), which was effective from June 1, 1998, to May 31, 1999, and was extended by mutual agreement of the parties on a month-to-month basis through October 31, 1999.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the production and maintenance employees unit and the exclusive collective-bargaining representative of the laboratory employees unit.

Since on or about March 18 and April 1, the Union, by letter, has requested that the Respondent furnish the Union with certain information.[5] The information requested

[5] The Union's March 18 letter identified the requested information as follows:

> 1) State the company's current owners, individual and corporate, and the top 10 shareholders.
>
> 2) What are the Company's plans on relocation after March 31, 1999? Where will the Company be located? Provide explanation and details.
>
> 3) You indicated in our meeting yesterday that the Company may put its equipment, machines, and other tangibles on tractor-trailers as of April 1, 1999, on a temporary basis if the Company is unable to secure a new lease and location by April 1. Where are the tractor-trailers located? Who owns the tractor trailers? When will this take place? When will you know whether this will take place?
>
> 4) How long will the bargaining unit members be out of work if this happens?
>
> 5) State the status of the company's obligations under the collective-bargaining agreement regarding payments for health and medical insurance, life insurance, and 401(k) plan? Please state the dates and payment amounts for each benefit and time period for which the payment applied between July 1998 and the present. This request is continuing, in that it requires you to provide the information through the date you respond to this request.
>
> 6) You stated to me in our meeting yesterday that the Company would be unable to pay both the payroll and insurance benefits on Friday, March 19. Please advise whether the Company will make these payments, and, if so, when?
>
> 7) Please provide all correspondence between Guardian Life Insurance Company and the Company between July 1998 and the present relating to payments of the premiums on the health insurance coverage to employees and Guardian's obligations, cancellation, and/or potential discontinuance of paying employee claims. If any of these documents relate to an individual employee and would disclose confidential medical information about the employees, you may redact the document appropriately to protect employee medical confidentiality.
>
> 8) Please provide all correspondence between the Company and any other health insurer relating to payments of the premiums on any type of health insurance coverage to employees and that company's obligations, cancellation, and/or potential discontinuance of paying employee claims. If any of these documents relate to an individual employee and would disclose confidential medical information about the employee, you may redact the document appropriately to protect employee medical confidentiality.
>
> 9) Please provide all correspondence between Equitable and the Company between July 1998 and the present relating to payments of the Company's 401(k) plan including the Company's obligations and the employees' contributions from withholdings. If any of these documents relates to an individual employee and would disclose confidential financial information about the employee, you may redact the document appropriately to protect employee financial confidentiality.
>
> 10) In our meeting yesterday, you state that you wanted the flexibility to lay off five (5) individuals outside of the seniority provisions of the collective-bargaining agreement in order to make the Company more financially attractive to a bank who would guarantee a potential lease. State the names of the individuals you wish to lay off and the reasons why you want to lay off that particular individual.
>
> 11) State the name of the bank that would be involved in the lease transaction and provide written documentation of the bank's position concerning the financial situation of the Company.

The Union's April 1 letter requested participant and beneficiary information concerning the Respondent's health and dental insurance plan, disability plan, life insurance plan, accidental death plan, and retirement (401(k)) plan. Specifically, regarding these plans, the Union requested the "latest updated Summary Plan Descriptions, plan descriptions, annual reports, any terminal reports, trust agreement, contract, or other instruments under which the above-referenced plans are established or operated."

by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the production and maintenance employees unit and the laboratory employees unit. Since on or about October 18 and October 21, the Union, by letter, has requested that the Respondent furnish the Union with certain additional information.[6] The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the production and maintenance employees unit and the laboratory employees unit. Since on or about October 19 and continuing to date, the Respondent has failed and refused to furnish the Union with the information requested in its October 18 and October 21 letters.

The production and maintenance employees agreement and the laboratory employees agreement establish various employee benefit funds and require that the Respondent make contributions to the funds on behalf of employees in the production and maintenance employees unit and the laboratory employees unit. Since on or about May 25 and at all material times thereafter, the Respondent, without the Union's consent, has failed to continue in effect all the terms and conditions of the production and maintenance employees agreement and the laboratory employees agreement by failing to remit contractually required contributions to the employee benefit funds, including the pension funds, on behalf of employees in the production and maintenance employees unit and the laboratory employees unit. The employee benefit funds and the requirement that the Respondent make contributions to such funds are mandatory subjects for the purpose of collective bargaining.

On or about October 25, the Respondent unilaterally notified employees in the production and maintenance employees unit and the laboratory employees unit that they were required to pay their own health insurance premiums, although the production and maintenance employees agreement and the laboratory employees agreement provides for payments by the Respondent. The Respondent so notified the employees without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

Since on or about October 25, the Respondent, by John Balazovic, at the Respondent's facility, bypassed the Union and dealt directly with its employees in the production and maintenance employees unit and the laboratory employees unit by suggesting that they appoint a representative to collect health insurance premiums and submit the payments directly to the Respondent, after the Respondent refused to pay such premiums itself. The subject of health insurance premiums and the means of their payment relates to wages, hours, and other terms and conditions of employment of the production and maintenance employees unit and the laboratory employees unit and is a mandatory subject for purposes of collective bargaining.

Since on or about October 29, the Respondent closed its facility, ceased doing business and terminated all of its employees in the production and maintenance employees unit and the laboratory employees unit. The Respondent took these actions without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct, despite the fact that, on October 18, the Union requested by letter that the Respondent bargain with the Union about this subject.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union over the effects of its decision to close its Syracuse, New

[6] The Union's October 18 letter requested the following information:

(1) The names and addresses of the employees who will be terminated and the dates of their termination.

(2) Updated information, and prospectively through the dates of termination, regarding the amounts of 401(k) contributions owing the employees' accounts including those amounts deducted from the employees' compensation and the company's contributions. This request includes copies of payroll statements for each employee, employee election notices regarding the percentage of deferral to the 401(k) accounts, and checks and correspondence with Marine Midland (trustee) and Equitable.

(3) Updated information regarding the company's payments to the employees' health insurers. This request includes copies of checks and correspondence with the insurer through the dates of termination.

(4) Information regarding the procedure for COBRA benefits for the employees and the company's efforts at meeting this legal obligation.

(5) Updated information on the status of the company's payment of withholdings to the appropriate governmental entities.

(6) Additional information on what is the "capital" side of the business and the "spare parts and service" business as referenced in the October 15, 1999 notice.

(7) Identify the "organizations" with which the company is discussing selling the spare parts and service business and the dates of any such sale.

(8) Whether the company will pay severance benefits to any employees pursuant to the collective-bargaining agreement(s) and, if so, the names of the employees and the amount of severance paid.

The October 21 letter did not request any additional information but renewed the Union's requests set forth in its October 18 letter.

York facility, we shall order the Respondent, on request, to bargain with the Union concerning the effects of its decision to cease operations. As a result of the Respondent's unlawful failure to bargain in good faith with the Union, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;[7] (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[7] *Melody Toyota*, 325 NLRB 846 (1998).

In addition, having found that the Respondent has failed to pay the appropriate employee benefit funds for employees in the bargaining units, including, but not limited to, pension funds as set forth in the production and maintenance employees collective-bargaining agreement and the laboratory employees collective-bargaining agreement, we shall order the Respondent to make whole the unit employees by making all contractually required contributions to the benefit funds that it failed to make since about May 25, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.[8]

We also shall order the Respondent to supply the Union with the information requested in its October 18 and October 21 letters to the Respondent.

The General Counsel's amended consolidated complaint seeks, as part of the remedy, an order requiring the Respondent to preserve and, on request, provide at the office designated by the Board or its agents, copies of specified records necessary to analyze the amount of backpay due under the terms of the Board's Order, including electronic copies, if such records are stored in electronic form. Our Order makes clear that electronic documents, if they exist, must be supplied. See *Bryant & Stratton Business Institute*, 327 NLRB 1135 fn. 3 (1999). With respect to the General Counsel's proposed requirement that the Respondent submit copies of the necessary backpay records at the office designated by the Board or its agents, we find that the question whether this change should be made in the Board's standard order language should be addressed after full opportunity for briefing by affected parties and that this is therefore not an appropriate case in which to make that determination. We therefore decline to include that requirement in the order. See *Kloepfers Floor Covering, Inc*., 330 NLRB 811 fn. 1 (2000).

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

[8] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent shall reimburse the employee, but the amount of such reimbursement shall constitute a setoff to the amount that the Respondent otherwise owes the fund.

ORDER

The National Labor Relations Board orders that the Respondent, Electro-Flyte, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Steelworkers of America, AFL–CIO, CLC as the exclusive collective-bargaining representative of the employees in the following appropriate units:

> All production and maintenance employees, excluding all office clerical employees, laboratory employees, guards, professional employees and supervisors as defined in the Act.
>
> All laboratory employees, technical employees, and all office clerical employees, but excluding guards, production and maintenance employees, supervisors, all inside and outside sales people, and any new position not currently defined by the collective-bargaining agreement.

(b) Failing to furnish the Union with information that it requests that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

(c) Failing to make contributions to benefit funds on behalf of the unit employees as required by the Respondent's 1997 collective-bargaining agreement with the Union covering the production and maintenance employees unit and the Respondent's 1998 collective-bargaining agreement with the Union covering the laboratory employees unit.

(d) Notifying employees, without giving prior notice to the Union and affording the Union an opportunity to bargain, that employees are required to pay their own health insurance premiums.

(e) Bypassing the Union and dealing directly with employees by suggesting that they appoint a representative to collect health insurance premiums and submit the payments directly to the Respondent.

(f) Failing to give the Union prior notice of its decision to close its facility, cease doing business, and terminate its employees and an opportunity to bargain about the effects of that decision on unit employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on October 18 and 21, 1999.

(b) Make all delinquent contributions to the Union benefit funds required by the collective-bargaining agreements and reimburse the funds for its failure to do so since about May 25, 1999, as set forth in the remedy section of this decision.

(c) Make whole the unit employees, by reimbursing them for any expenses ensuing from its failure to make the required contributions to the Union benefit funds, as set forth in the remedy section of this decision.

(d) On request, bargain with the Union concerning the effects on the unit employees of the closing of the Respondent's Syracuse, New York facility, its cessation of business, and its termination of its employees, and reduce to writing and execute any agreement reached as a result of such bargaining.

(e) Pay its former unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from October 29, 1999, the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy portion of this decision.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[9] to the Union and to all current and former unit employees employed by the Respondent at any time since May 25, 1999.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 3 for the purpose of arranging a hearing before an administrative law judge limited to the allegations set forth in amended consolidated complaint paragraph 9(e) and paragraph 14 to the extent that it pertains to paragraph 9(e). The administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL–CIO, CLC as the exclusive collective-bargaining representative of our employees in the following appropriate units:

All production and maintenance employees, excluding all office clerical employees, laboratory employees, guards, professional employees and supervisors as defined in the Act.

All laboratory employees, technical employees, and all office clerical employees, but excluding guards, production and maintenance employees, supervisors, all inside and outside sales people, and any new position not currently defined by the collective-bargaining agreement.

WE WILL NOT fail to furnish the Union with information that it requests that is relevant and necessary to its role as the exclusive collective-bargaining representative of our bargaining-unit employees.

WE WILL NOT fail to make contributions to benefit funds on behalf of our unit employees as required by our 1997 collective-bargaining agreement with the Union covering the production and maintenance employees bargaining unit and our 1998 collective-bargaining agreement with the Union covering the laboratory employees bargaining unit.

WE WILL NOT notify you, without giving prior notice to the Union and affording the Union an opportunity to bargain, that employees are required to pay their own health insurance premiums.

WE WILL NOT bypass the Union and deal directly with you by suggesting that our employees appoint a representative to collect health insurance premiums and submit the payments directly to the Respondent.

WE WILL NOT fail to give the Union prior notice of any decision to close our facility, cease doing business, and terminate employees and an opportunity to bargain about the effects of that decision on unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on October 18 and 21, 1999.

WE WILL make all delinquent contributions to the Union benefit funds required by our collective-bargaining agreements and reimburse the funds for our failure to do so since about May 25, 1999.

WE WILL make you whole, by reimbursing you for any expenses ensuing from our failure to make the required contributions to the Union benefit funds.

WE WILL, on request, bargain with the Union concerning the effects on the unit employees of the termination of our operations at our Syracuse, New York facility, our cessation of business, and our termination of employees, and reduce to writing and execute any agreement reached as a result of such bargaining.

WE WILL pay our former employees in the units described above who were employed at the time of our closing their normal wages for the period of time set forth in the decision underlying this notice to employees, with interest.

ELECTRO-FLYTE, INC.